

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

IN THE UNITED STATES DISTRICT COURT

JUN 17 2010

JAMES N. HATTEN, CLERK

AFFIDAVIT OF IVAN CHAPA IN SUPPORT OF AFFIANT'S CONSTRUED

2255 MOTION

DOCKET NO.: 1:05 CR-254-JTC-3

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AFFIANT IVAN CHAPA IS HEREBY PRESENTING NEW FINDINGS OF THE SUPREME COURT RULING  
THAT WAS UNAVAILABLE DURING THE TIME AFFIANT FILED HIS MOTION THAT IS NOW  
CONSTRUED AS A 2255 MOTION

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In light of the United States Supreme Court's findings and ruling in the case of Padilla v. Kentucky, decided upon on March 31, 2010, which the justices found that, when an attorney or attorneys fail to advise their clients of the risk factors in pleading guilty, such amounts to ineffective assistance of counsel. The justices ruled that lawyers must be truthful to their client to avert misunderstanding or miscarriage of justice.

The rights to counsel efficiency is a guaranteed right. However, when counsels fail to be competent, incompetency and inadequate performance will only manifest into serious constitutional violation.

**PRESENTED FACTS OF INEFFECTIVE ASSISTANCE OF COUNSEL**

Affiant Ivan Chapa hereby set forth this material affidavit as a true document bearing upon oath and under the full penalty of perjury to be true, correct and certain.

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1. That, this new ruling of the Supreme Court shed light upon my own case.
2. That, after my arrest, my family hired Mr. Richard Alamia as my legal counsel and attorney. After having not more than 2 to 3 phone calls with Mr. Alamia prior to my guilty plea acceptance, I was assured by him that, my sentence would not be more than 5 years, and that I would not be deported from the United States.
3. That, not only was I told that I would not be removed from the United States, Mr. Alamia told me that in any event or attempt to remove me from the United States, he would be my attorney and counsel at any immigration proceeding.
4. That, I was being misinformed and was tricked by Mr. Alamia's incompetency and unprofessionalism, which causes me not to even think of taking my case to trial.
5. That, because of my attorney's misguided information and untruthfulness, my rights to constitutional due process was affected.
6. That, attached to this affidavit are affidavits of my family, those who were also tricked and deceived by Mr. Alamia's legal advice.
7. That, my choice to go to trial or to plead guilty was affected by Mr. Alamia's misrepresentation which resulted in violation of my rights to proper representation.



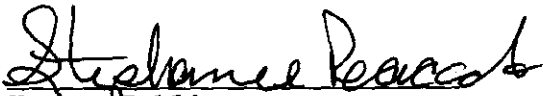
8. That, because of Mr. Alamia's ineffectiveness, I entered into a plea deal with the government not knowing that such would have affected my residency of the United States. That, the consequences of risk factors prior to entering a guilty plea must be highlighted by counsel. Thus, when counsels fail to inform their client about the dangers ahead, such affects the defendant's decision making.

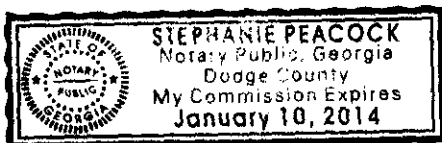
As in my case, counsel's incompetency affected my decision making. That, I have lived for most of my life in the United States and for counsel to assure me that I would not be deported, I did believe in his honesty.

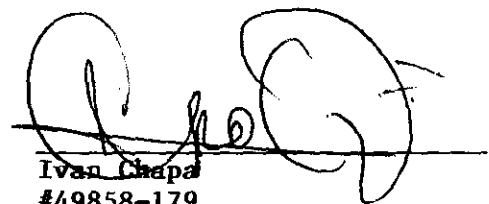
Specifically, I have requested of counsel's professional advice as to whether the guilty plea would affect my removal from the United States, and counsel assured me that it would not.

Respectfully presented,

SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public, on this 7<sup>th</sup> day of June 2010, as a true document bearing upon oath and under the full penalty of perjury to be true, correct and certain.

  
Notary Public



  
Ivan Chapa  
#49858-179  
McRae Correctional Facility  
P.O. Drawer 30  
McRae, GA 31055



CERTIFICATE OF SERVICE

I, Ivan Chapa, hereby certify on this 15 day of June 2010, that I personally mailed a legal mail to the clerk of court for the Northern District of Georgia. The enclosed, are Affidavit of Ivan Chapa, Affidavits of his mother and brother, all in support of Chapa's construed pending 2255 motion.

Respectfully,



Ivan Chapa

#49858-179

P.O. Drawer 30

McRae, GA 31055





AFFIDAVIT OF ANY FACT

STATE OF TEXAS

COUNTY OF HIDALGO

BEFOREME, THE NOTARY PUBLIC, DID PERSONALLY APPEAR ANIBAL ISAI CHAPA, WHOM DEPOSED AND STATED UPON OATH THE FOLLOWING:

I, ANIBAL ISAI CHAPA, BROTHER OF IVAN DE JESUS CHAPA GONZALEZ, PRISON NO. 49858179, AM WRITING THIS LETTER TO STATE THAT I HEREBY SET FORTH THIS AFFIDAVIT AS A TRUE MATERIAL EVIDENCE BEARING UPON OATH TO BE THE TRUTH AND TRUTH ONLY, FACTS:

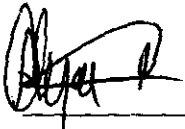
- I, ANIBAL ISAI CHAPA, BROTHER OF IVAN DE JESUS CHAPA GONZALEZ, ARE A WITNESS THAT MR. RICHARD ALAMIA GAVE FALSE PROMISES IN REGARDS TO MY BROTHER'S CRIMINAL CASE ON OR ABOUT 2005. MR. RICHARD ALAMIA WAS PAID THE SUM AMOUNT OF \$45,000 TO REPRESENT MY BROTHER IN THE FEDERAL COURT AND I HAVE FACTS THAT MR. ALAMIA DID NOT FULLY REPRESENT MY BROTHER CORRECTLY.
- I PERSONALLY RECEIVED A GUARANTEE FROM MR. ALAMIA THAT MY BROTHER IVAN DE JESUS CHAPA GONZALEZ WAS ONLY GOING TO HAVE A SENTENCE OF 4 TO 5 YEARS IN PRISON IF HE PLEADS GUILTY. THE TOTAL OF HIS SENTENCE WAS 12 YEARS, WHICH IS SOMETHING THAT MR. ALAMIA HAD NOT MENTIONED TO MY BROTHER NOR I, HIS FAMILY. MY BROTHER PLEAD GUILTY BECAUSE HIS LAWYER, MR. ALAMIA, ADVISED HIM THAT PLEADING GUILTY WOULD ALLOW FOR HIM TO ONLY RECEIVE 4 TO 5 YEARS IN PRISON, NOT 12. I ALSO READ THE FEDERAL DOCUEMNTS CONCERING MY BROTHER'S CASE, WHERE IT CLEARLY STATED THE SENTENCE OF MY BROTHER'S CASE WAS "10 YEARS TO LIFE," AND WHEN I ASKED THE LAWYER, HE SAID NOT TO WORRY ABOUT WHAT WAS IN THE DOCUMENTS, HE SAID THOSE WERE JUST PAPERS THAT DID NOT MEAN MUCH.
- I AM ALSO A WITNESS THAT MR. ALAMIA DID NOT HAVE A LICENSE TO BE A LAWYER IN GEORGIA, ONLY IN TEXAS WHERE HE RESIDES; HE NEVER TOLD US THAT HE DID NOT HAVE A LICENSE TO PERFORM FEDERAL COURT DUTIES IN ANOTHER STATE. MR. ALAMIA NEVER VISITED MY BROTHER TO ADVISE HIM OR TO SPEAK TO HIM, HE ONLY APPEARED 30 MINUTES BEFORE MY BROTHER'S COURT HEARING WHICH IS WHERE HE TOLD MY BROTHER TO PELAD GUILTY, HE NEVER SPOKE NOR VISITED MY BROTHER TO ADVICE HIM BEFORE THE HEARINIG. I BELIEVE MY BROTHER WAS NOT ADVISED WELL AND HIS LEGAL REPRESENTATION WAS NOT WHAT ANY PERSON DESERVES. I BELIEVE MY BROTHER'S LAWYER DID NOT FULLY REPRESENT MY BROTHER AND ADVISE HIM TO MAKE THE RIGHT DECISONS, HIS INFORMATION WAS FALSE AND MISLEADING, AND HE DID NOT HAVE A VALID LICENSE TO BE ABLE TO PERFORM HIS DUTIES IN THE STATE THAT WE WERE HIRING HIM FOR.
- ANOTHER FALSE PROMISE BY MR. ALAMIA WAS THAT HE TOLD ME THAT MY BROTHER WOULD SERVE HIS SENTENCE IN HIS HOME STATE, WHICH IS TEXAS, AND MY BROTHER STAYED IN GEORGIA AND HAS BEEN SERVING HIS SENTENCE THERE.
- MY BROTHER WAS ALSO ADVISED BY MR. ALAMIA TO GIVE UP HIS RIGHT TO APPEAL HIS CASE, SINCE HIS SENTENCED TIME WAS ONLY GOING TO BE 4 TO 5 YEARS, IT WOULD BE UNECESSARY



TO APPEAL THE CASE, AND SO MY BROTHER DID NOT SIGN ANY APPEAL OR DECIDED TO FURTHER APPEAL THE CASE DUE TO MR. ALAMIA'S ADVICE.

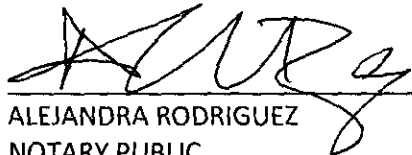
I ALSO TESTIFY THAT I AM WILLING TO BE CALLED UPON AT ANY TIME TO GIVE MY TESTIMONY IN ANY COURT OF LAW. I BEAR WITNESS THAT MY BROTHER IVAN WAS MISLED BY MR. ALAMIA.

THANK YOU FOR YOUR TIME AND CONSIDERATION

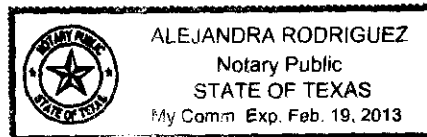


ANIBAL ISAI CHAPA

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS THE 9<sup>TH</sup> DAY OF JUNE OF 2010 BY THE SAID ANIBAL ISAI CHAPA, BY THE NOTARY PUBLIC.



ALEJANDRA RODRIGUEZ  
NOTARY PUBLIC  
STATE OF TEXAS, COUNTY OF HIDALGO  
MY COMM. EXPIRES: 02/19/2013





AFFIDAVIT OF ANY FACT

STATE OF TEXAS

COUNTY OF HIDALGO

BEFORE ME, THE NOTARY PUBLIC, DID PERSONALLY APPEAR EVELIA GONZALEZ CHAPA, WHOM DEPOSED AND STATED UPON OATH THE FOLLOWING:

I, EVELIA GONZALEZ CHAPA, MOTHER OF IVAN DE JESUS CHAPA GONZALEZ, PRISON NO. 49858179, AM WRITING THIS LETTER TO STATE THAT I HEREBY SET FORTH THIS AFFIDAVIT AS A TRUE MATERIAL EVIDENCE BEARING UPON OATH TO BE THE TRUTH AND TRUTH ONLY, FACTS:

- I, EVELIA GONZALEZ CHAPA, DO POSSESS KNOWLEDGE AND KNOWING THIS TO BE TRUE THAT, ATTORNEY MR. RICHARD ALAMIA RECEIVED THE AMOUNT OF \$45,000 FOR THE LEGAL ASSISTANCE OF BEING MY SON'S ATTORNEY IN THE FEDERAL COURT.
- I WAS ASSURED THAT MY SON'S SENTENCE WOULD BE MORE OR LESS 4 OR 5 YEARS THE MOST, NOT THE 12 THAT HE WAS SENTENCED FOR.
- I WAS A PERSONAL WITNESS WHEN MY SON ANIBAL ISAI CHAPA WAS TOLD ABOUT MY SON IVAN DE JESUS CHAPA GONZALEZ'S STATEMENT, BEING ONLY 4 TO 5 YEARS.
- I WAS A WITNESS OF MR. ALAMIA'S CONVERSATION WITH MY SON ANIBAL ISAI CHAPA IN WHICH MR. ALAMIA KEPT REASSURING MY SON THAT THERE WAS GOING TO BE NO NEED FOR AN APPEAL TO HIS CASE BECAUSE MY SON'S SENTENCE WAS GOING TO BE SO SHORT. I ALSO WITNESSED WHEN HE ADVISED THAT MY SON PLEA GUILTY IN ORDER TO RECEIVE LESS YEARS IN HIS SENTENCE, AND THIS WAS NOT A GOOD ADVICE BECAUSE MY SON THEN PLEAD GUILTY AND REFUSED HIS RIGHTS TO AN APPEAL. I BELIEVE THIS INFORMATION WAS WRONGFULLY ADVISED, BEING THAT ALL OF MR. ALAMIA'S ADVICES WERE INCORRECT AND MISLEADING. MY SON WAS SENTENCED TO 12 YEARS, AND HAD ALREADY REFUSED HIS RIGHT TO AN APPEAL, SO THEREFORE MR. ALAMIA'S ADVICE WAS INACCURATE.
- ANOTHER FALSE PROMISE BY MR. ALAMIA WAS THAT HE TOLD MY SON ANIBAL ISAI CHAPA THAT MY SON WOULD SERVE HIS SENTENCE IN HIS HOME STATE, WHICH IS TEXAS, AND MY SON STAYED IN GEORGIA AND HAS BEEN SERVING HIS SENTENCE THERE.

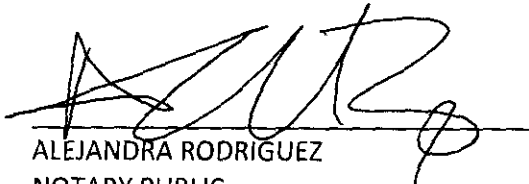
I ALSO TESTIFY THAT I AM WILLING TO BE CALLED UPON AT ANY TIME TO GIVE MY TESTIMONY IN ANY COURT OF LAW. I BEAR WITNESS THAT MY SON IVAN WAS MISLED BY MR. ALAMIA.

THANK YOU FOR YOUR TIME AND CONSIDERATION

  
EVELIA GONZALEZ CHAPA



SWORN TO AND SUBSCRIBED BEFORE ME ON THIS THE 9<sup>TH</sup> DAY OF JUNE OF 2010 BY THE SAID EVELIA GONZALEZ CHAPA, BY THE NOTARY PUBLIC.

  
ALEJANDRA RODRIGUEZ  
NOTARY PUBLIC  
STATE OF TEXAS, COUNTY OF HIDALGO  
MY COMM. EXPIRES: 02/19/2013

